IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2266 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? -No.

2 To be referred to the Reporter or not ? -No.

3 Whether their Lordships wish to see the fair copy of the judgment ? -No.

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? -No.

5 Whether it is to be circulated to the civil judge ? -No.

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SARVODAY COMMERCIAL CO OP. BANK LIMITED - Petitioner(s)
Versus
REGIONAL PROVIDENT FUND COMMISSIONER (II) - Respondent(s)

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Appearance :

MR PRAKASH K JANI for Petitioner(s) : 1,
MR JS YADAV for Respondent(s) : 1,
MR NIRAL R MEHTA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 28/06/2006

ORAL JUDGMENT

Heard learned advocate Mr.P.K.Jani on behalf of the

petitioner. Learned advocate Mr.N.R.Mehta appearing on behalf of respondent. In present petition, petitioner has challenged the order passed by the respondent dated 27/2/1997, Annexure-"O". Annexure-"O" order is passed by the respondent authority under Section 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. The damages claimed from the petitioner comes to total amount of Rs.3,22,663/- as per the annexed statement which is at page 70. The respondent authority has given detail of due date of payment and date of remittance and 12% damages for the delayed payment. The learned advocate Mr.P.K.Jani submitted that petitioner is having its own P.F. Scheme with effect from 1/1/1980. The said amount of P.F. invested in National Savings Certificate with the postal department for a period of five years. He submitted that accordingly, resolution was passed by the petitioner to invest the said amount in the post office. Thereafter, by letter dated 23/6/1989, the respondent authority made applicable the Provident Fund Act, 1952 to the petitioner. Thereafter, from

December, 1985 according to respondent authority, the petitioner shall have to deduct henceforth means from 23/6/1989 P.F. and Family Pension contribution of all the eligible employees and deposit the said amount into the employees' equal contributory share and administrative charges into the respective employees P.F. account as required in para 38 and para 9 of the Employees P.F. Scheme and Family Pension Scheme respectively within five days of the close of every month. The learned advocate Mr.Jani submitted that para 7 of letter dated 23/6/1989 giving direction to the petitioner to deduct henceforth P.F. from the employee concerned. Now, according to him, inquiry initiated under Section 14B of the PF Act as if that the petitioner has not deposited the amount of P.F. Contribution from the year 1985 to 1989 which has been taken as delayed payment by the petitioner. Therefore, powers exercised under Section 14B of the PF Act. Learned advocate Mr.Jani also pointed out from the statement at page 51, Annexure-”J” that an amount invested in National Savings Certificate was matured thereafter immediately that was deposited

before the respondent authority. Even though there was no delay, he also submitted that there was a correspondence between them. It was pointed out that if the amount is encashed, then it will be lose in the interest to the concerned employee. Therefore, he submitted that there was no delay from the year 1985 to 1989 onwards by the petitioner but there was a delay as considered by the respondent authority before the year 1989 between year 1985 to 1989. Therefore, he submitted that a reason given by the P.F. authority for imposing the damages under Section 14B about delayed payment of amounts for the period from January 1986 to February 1993. therefore, it comes to Rs.3,22,663/-. The learned advocate Mr.Jani submitted that there was delay on the part of the respondent authority to initiate necessary action under Section 14B of the P.F. Act, 1952. He also submitted that this delay remained unexplained by the authority therefore, the order passed by the respondent authority dated 27/2/1997 is required to be quashed.

Mr.Niral Mehta, learned advocate submitted that it is the duty of the petitioner to pay the contribution from the date of P.F. Act made applicable as per letter dated 23/6/1989. He submitted that respondent authority has rightly decided the matter and there was delayed payment from the period from January 1986 and therefore, damages has been imposed against the petitioner establishment. For that respondent is entitled to recover the said amount from the petitioner. He also submitted that in show cause notice, 100% damages has been proposed by the authority but ultimately after considering the reply which has been reduced to 12% therefore, according to him this being legal order passed by the authority. Therefore, petition may be disposed of.

I have considered the submissions made by both the learned advocates. I have also perused the order passed by the authority dated 27/2/1997. I have also perused the correspondence between the parties and also the scheme which was implemented by the petitioner with effect from 1/1/1980.

It is necessary to note one important fact which has been placed before the respondent authority by the petitioner as to para 2 of the order in question is quoted as under:

> “Accordingly, a notice was issued to the establishment on 1/11/95 to show cause why damage4s under section 14-E of the said Act may not be levied and recovered for delaying the payments. The details were furnished to the employer along with the notice. The first inquiry was held on 1/11/95 and the last one on 27/9/96. In the course of the hearing, the establishment submitted a representation dated 8/12/95 which inter-alia stated that the establishment was having provident fund scheme of its own even prior to the application of the Employees' Provident Fund Act to it. Further, the amount of provident fund contribution so collected was deposited in securities and national savings certificates etc. for earning

interest. It further stated that the establishment could not transfer the entire amount of past accumulation immediately after the date of coverage as required under the Rule since the amount was already invested as above. They further stated that there was no bad intention or mal-practice and the delay was quite natural one and was beyond their control. They, therefore, requested for not levying any penalties for delay in transfer of past accumulation. In the various sittings held, the establishment presented that there was no intention to utilize provident fund money for the business of the bank or for any other activities. The establishment, therefore, requested for leniency."

Thus, para 2 is quoted as above. The findings given by the respondent is in para 3, which is quoted as under:

"The matter has been examined in the light of

the above and also with reference to the Rule position of the Employees' Provident Fund Act. I.S. Somnathan Nair, Regional Provident Fund Commissioner, Gujarat State, Ahmedabad in exercise of the powers conferred on me by section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 think fit and having regard to the circumstances, persistancy and length of each default and on overall consideration of the representation made by the establishment, feel that the ends of justice would meet if damages are levied at the rates indicated in the enclosed statement instead of 100 as proposed in the show cause notice. Accordingly, I order that the damages for delayed payment of amounts of Provident fund/family pension fund/deposit linked insurance fund and administrative charges both, for the period from January, 1986 to February, 1993 totaling Rs.3,22,663/- (Rs.Three lacs twenty two thousand six hundred sixty three only) be imposed and recovered from the employer

in relation to the establishment led as M/s. Sarvoday Commercial Co.operative Bank Limited, Mehsana bearing code number-GJ/16905. It is further ordered that the amount of damages as given below should be paid by the aforesaid employer within fifteen days of receipt of this order failing which further action be taken as provided under Section 8 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 for realizing this amount."

It is also necessary to consider that letter dated 23/6/1989 having retrospective effect from the year 1985 not to deposit the contribution from the period from the year 1985 to 1989, that amount considered to be delay on the part of the petitioner. If any further delay from the year 1989 onwards, then the authority is right to consider the delay as to impose damages against the petitioner. From the year 1989 onwards, the delay was caused due to that amount in question invested in National Savings Certificate which was matured in the year 1992 and immediately

thereafter, the amount has been transferred to the P.F. authority. So, looking to this fact, there is unexplained delay on the part of the authority that why the inquiry has been initiated against the petitioner after a period of about ten years. No delay has been explained by the respondent authority. However, according to my opinion, as per decision in the case of South Kanara Home Industries v. Employees' Provident Fund Appellate Tribunal, New Delhi and Another, reported in 2006 LAB. I.C. (NOC) 87, Karnatak. In view of these observations and considering the order in question where apparently the explanation given by the petitioner is not at all considered which amounts to non-application of mind and to levied damages with effect from January 1986 up to February 1993 is not a delay on the part of the petitioner to deposit the amount before the respondent authority and consideration of delay from the year 1985 to the year 1989 is totally irrelevant aspect which has been taken into account by the respondent authority for damages under Section 14B of the P.F. Act. Then order dated 27/2/1997 which is at

Annexure-”O” passed by the respondent authority under Section 14B is required to be quashed and set aside.

In the result, the present petition is allowed. Order passed by the respondent authority dated 27/2/1997 which is at Annexure-"O” is hereby quashed and set aside.

It is directed to the respondent authority to decide the matter under Section 14B of the P.F. Act within a period of two months after giving reasonable opportunities of hearing to the petitioner, to pass reasoned order in accordance with law, after considering their reply. However, the respondent authority will reconsider the matter after giving reasonable opportunity to the petitioner, without being influenced by the observations made by this Court. Accordingly, Rule is made absolute. No order as to cost. Accordingly, petition is disposed of.

(H.K.RATHOD, J.)

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